

AMENDED IN ASSEMBLY APRIL 30, 2002

AMENDED IN SENATE JANUARY 29, 2002

AMENDED IN SENATE APRIL 19, 2001

SENATE BILL

No. 145

Introduced by Senator Perata

(Principal coauthor: Assembly Member Havice)

January 30, 2001

An act to amend ~~Sections 6385 and 19136 of, and to add Section 19136.8 to, Section 6385~~ of the Revenue and Taxation Code, relating to taxation, *to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 145, as amended, Perata. Sales and use taxes: exemptions: bunker fuel.

The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property. That law provides various exemptions from that tax, including an exemption, until 2003, for the sale of fuel and petroleum products to a water common carrier for immediate shipment outside this state for consumption in the conduct of its business as a common carrier after the first out-of-state destination, if specified conditions are met.

This bill would extend the 2003 repeal date to 2013, thereby extending the application of this exemption provision.

~~Existing state income tax laws, in modified conformity with federal law, impose specified penalties for underpayment of estimated taxes.~~

~~This bill would provide additional conformity to federal law with respect to those provisions, as provided.~~

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend upon its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6385 of the Revenue and Taxation
2 Code, as amended by Section 1 of Chapter 615 of the Statutes of
3 1997, is amended to read:

4 6385. (a) There are exempted from the computation of the
5 amount of the sales tax the gross receipts from the sale of tangible
6 personal property, other than fuel and petroleum products, to a
7 common carrier, shipped by the seller via the purchasing carrier's
8 facilities under a bill of lading whether the freight is paid in
9 advance, or the shipment is made freight charges collect, to a point
10 outside this state and the property is actually transported to the
11 out-of-state destination for use by the carrier in the conduct of its
12 business as a common carrier.

13 (b) There are exempted from the computation of the amount of
14 the sales tax the gross receipts from the sale of tangible personal
15 property, other than aircraft fuel and petroleum products,
16 purchased by a foreign air carrier and transported by the foreign
17 air carrier's facilities to a foreign destination for use by the air
18 carrier in the conduct of its business as a common carrier by air of
19 persons or property. To qualify for this exemption, the foreign air
20 carrier shall furnish to the seller a certificate in writing that the
21 property shall be transported and used in the manner required in
22 this subdivision. The certificate shall be substantially in the form



1 prescribed by the board. A seller is not liable for the sales tax if the
2 seller accepts the certificate in good faith. If the seller does not
3 have the certificate at the time the board requests the seller to
4 submit the certificate to the board, the seller shall be given a
5 reasonable time to request the foreign air carrier to provide the
6 seller with the certificate. The foreign air carrier shall maintain
7 records in this state, such as a copy of a bill of lading, and air
8 waybill or cargo manifest, documenting its transportation of the
9 tangible personal property to a foreign destination.

10 (c) There are exempted from the computation of the amount of
11 the sales tax the gross receipts from the sale of fuel and petroleum
12 products to a water common carrier, for immediate shipment
13 outside this state for consumption in the conduct of its business as
14 a common carrier after the first out-of-state destination. To qualify
15 for the exemption the common carrier shall furnish to the seller an
16 exemption certificate in writing stating the quantity of fuel and
17 petroleum products claimed as exempt which is to be consumed
18 after reaching the first out-of-state destination. That certificate
19 shall bear the purchaser's valid seller's permit number or valid fuel
20 exemption registration number and shall be substantially in the
21 form prescribed by the board. Acceptance in good faith of that
22 certificate shall relieve the seller from liability for the sales tax.

23 (d) "First out-of-state destination," as used in this section,
24 means the first point reached outside this state by a common carrier
25 in the conduct of its business as a common carrier at which cargo
26 or passengers are loaded or discharged, cargo containers are added
27 or removed, fuel is bunkered, or docking fees are charged.

28 "First out-of-state destination," as used in this section, also
29 includes the entry point of the Panama Canal when the carrier is
30 only transiting the canal in the conduct of its business as a common
31 carrier.

32 (e) "Common carrier," as used in this section, with respect to
33 water transportation, shall be deemed to include any vessel
34 engaged, for compensation, in transporting persons or property in
35 interstate or foreign commerce.

36 (f) "Foreign air carrier," as used in this section, means a
37 foreign air carrier as defined in Section 40102 of Title 49 of the
38 United States Code.

39 (g) "Immediate shipment," as used in this section, means that
40 the delivery of the fuel and petroleum products by the seller is

1 directly into a ship for transportation outside this state and not for
2 storage by the purchaser or any third party.

3 (h) Any common carrier claiming exemption under
4 subdivision (c) who is not required to hold a valid seller's permit
5 shall be required to register with the board and obtain a fuel
6 exemption registration number and shall be required to file returns
7 as the board may prescribe if either the board notifies the carrier
8 that returns must be filed or the carrier is liable for taxes based
9 upon consumption of fuel erroneously claimed as exempt under
10 this section. A common carrier required to hold a fuel exemption
11 registration number shall be subject to all applicable provisions of
12 this part, Part 1.5 (commencing with Section 7200), and Part 1.6
13 (commencing with Section 7251).

14 (i) A common carrier claiming an exemption under subdivision
15 (c), upon request, shall make available to the board records,
16 including, but not limited to, a copy of a log abstract or a cargo
17 manifest, documenting its transportation of the fuel or petroleum
18 product to an out-of-state destination and the amount claimed as
19 exempt. If the carrier fails to provide these records upon request,
20 the board may revoke the carrier's fuel exemption registration
21 number.

22 (j) The board may require any carrier claiming an exemption
23 under this section and required to obtain a fuel exemption
24 registration number to place with it that security as the board may
25 determine pursuant to Section 6701.

26 (k) Pursuant to subdivisions (a), (b), and (c), any use of the
27 property by the purchasing carrier, other than that incident to the
28 delivery of the property to the carrier and the transportation of the
29 property by the carrier to the first out-of-state destination and
30 subsequent use in the conduct of its business as a common carrier,
31 or a failure of the carrier to document its transporting the property
32 to the first out-of-state destination, shall subject the carrier to
33 liability for payment of sales tax as if it were a retailer making a
34 retail sale of the property at the time of that use or failure, and the
35 sales price of the property to it shall be deemed to be the gross
36 receipts from the retail sale.

37 (l) This section shall remain in effect only until January 1,
38 2013, and as of that date is repealed.



SEC. 2. Section 6385 of the Revenue Code, as amended by Section 2 of Chapter 615 of the Statutes of 1997, is amended to read:

6385. (a) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than fuel and petroleum products, to a common carrier, shipped by the seller via the purchasing carrier's facilities under a bill of lading whether the freight is paid in advance, or the shipment is made freight charges collect, to a point outside this state and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a common carrier.

(b) There are exempted from the computation of the amount of the sales tax the gross receipts from the sale of tangible personal property, other than aircraft fuel and petroleum products, purchased by a foreign air carrier and transported by the foreign air carrier's facilities to a foreign destination for use by the air carrier in the conduct of its business as a common carrier by air of persons or property. To qualify for this exemption, the foreign air carrier shall furnish to the seller a certificate in writing that the property shall be transported and used in the manner required in this subdivision. The certificate shall be substantially in the form prescribed by the board. A seller is not liable for the sales tax if the seller accepts the certificate in good faith. If the seller does not have the certificate at the time the board requests the seller to submit the certificate to the board, the seller shall be given a reasonable time to request the foreign air carrier to provide the seller with the certificate. The foreign air carrier shall maintain records in this state, such as a copy of a bill of lading, and air waybill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination.

(c) "Common carrier," as used in this section, with respect to water transportation, shall be deemed to include any vessel engaged, for compensation, in transporting persons or property in interstate or foreign commerce.

(d) "Foreign air carrier," as used in this section, means a foreign air carrier as defined in Section 40102 of Title 49 of the United States Code.

(e) Pursuant to subdivisions (a) and (b), any use of the property by the purchasing carrier, other than that incident to the delivery

1 of the property to the carrier and the transportation of the property
2 by the carrier to an out-of-state destination and subsequent use in
3 the conduct of its business as a common carrier, or a failure of the
4 carrier to document its transporting the property to an out-of-state
5 destination, shall subject the carrier to liability for payment of
6 sales tax as if it were a retailer making a retail sale of the property
7 at the time of that use or failure, and the sales price of the property
8 to it shall be deemed to be the gross receipts from the retail sale.

9 (f) This section shall become operative on January 1, 2013.

10 ~~SEC. 3. Section 19136 of the Revenue and Taxation Code is~~
11 ~~amended to read:~~

12 ~~19136. (a) Section 6654 of the Internal Revenue Code,~~
13 ~~relating to failure by an individual to pay estimated income tax,~~
14 ~~shall apply, except as otherwise provided.~~

15 ~~(b) Section 6654(a)(1) of the Internal Revenue Code is~~
16 ~~modified to refer to the rate determined under Section 19521 in~~
17 ~~lieu of Section 6621 of the Internal Revenue Code.~~

18 ~~(c) (1) Section 6654(c)(1) of the Internal Revenue Code,~~
19 ~~relating to exceptions where the tax is a small amount, shall not~~
20 ~~apply.~~

21 ~~(2) No addition to the tax shall be imposed under this section~~
22 ~~if the tax imposed under Section 17041 or 17048 for the preceding~~
23 ~~taxable year, minus the sum of any credits against the tax provided~~
24 ~~by Part 10 (commencing with Section 17001) or this part, or the~~
25 ~~tax computed under Section 17041 or 17048 upon the estimated~~
26 ~~income for the taxable year, minus the sum of any credits against~~
27 ~~the tax provided by Part 10 (commencing with Section 17001) or~~
28 ~~this part, is less than two hundred dollars (\$200), except in the case~~
29 ~~of a separate return filed by a married person the amount shall be~~
30 ~~less than one hundred dollars (\$100).~~

31 ~~(d) Section 6654(f) of the Internal Revenue Code shall not~~
32 ~~apply and for purposes of this section the term “tax” means the tax~~
33 ~~imposed under Section 17041 or 17048, less any credits against the~~
34 ~~tax provided by Part 10 (commencing with Section 17001) or this~~
35 ~~part, other than the credit provided by subdivision (a) of Section~~
36 ~~19002.~~

37 ~~(e) The credit for tax withheld on wages, as specified in Section~~
38 ~~6654(g) of the Internal Revenue Code, shall be the credit allowed~~
39 ~~under subdivision (a) of Section 19002.~~

40 ~~(f) This section shall apply to a nonresident individual.~~

1 ~~SEC. 4.— Section 19136.8 is added to the Revenue and Taxation~~
2 ~~Code, to read:~~

3 ~~19136.8.— (a) No addition to tax shall be made under Section~~
4 ~~19136 for any period before April 15, 2003, with respect to any~~
5 ~~underpayment of an installment for the 2002 taxable year, to the~~
6 ~~extent that the underpayment was created or increased by any~~
7 ~~provision of the act adding this section.~~

8 ~~(b) No addition of tax shall be made under Section 19142 for~~
9 ~~any period before April 15, 2003, with respect to any~~
10 ~~underpayment of an installment for the 2002 taxable year, to the~~
11 ~~extent that the underpayment was created or increased by any~~
12 ~~provision of the act adding this section.~~

13 ~~(c) The Franchise Tax Board shall implement this section in a~~
14 ~~reasonable manner.~~

15 ~~SEC. 5.—~~

16 ~~SEC. 3.~~ Notwithstanding Section 2230 of the Revenue and
17 Taxation Code, no appropriation is made by this act and the state
18 shall not reimburse any local agency for any sales and use tax
19 revenues lost by it under this act.

20 *SEC. 4. This act provides for a tax levy within the meaning of*
21 *Article IV of the Constitution and shall go into immediate effect.*
22 *However, the provisions of this act shall become operative on the*
23 *first day of the first calendar quarter commencing more than 90*
24 *days after the effective date of this act.*

